

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CARL BLESSING on behalf of Himself and All Others Similarly Situated,)	
)	
Plaintiff,)	No. 1:09-cv-10035-HB
)	ECF CASE
v.)	
)	
SIRIUS XM RADIO INC.,)	
)	
Defendant.)	
)	

NOTICE OF MOTION

Defendant, Sirius XM Radio Inc. (“Sirius XM”), moves for an order, pursuant to Federal Rule of Civil Procedure 12(b)(6), to (i) dismiss from this lawsuit certain plaintiffs who were improperly joined in this action after the Court-ordered deadline for joining additional parties (Scott Byrd, Glenn Demott, Melissa Fast, James Hewitt, Ronald William Kader, Greg Lucas, Janel and Kevin Stanfield, Todd Stave, Paola Tomassini, and Edward Leyba); (ii) dismiss for lack of standing all of the claims asserted under Count IV of the Second Consolidated Amended Class Action Complaint [Doc. No. 46], for violation of consumer protection statutes, with respect to States other than California, Florida, Illinois, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, and Pennsylvania; (iii) dismiss plaintiffs’ claim under Section 349 of New York’s General Business Law for failure to state a claim; (iv) dismiss plaintiffs’ claim under California’s Consumer Legal Remedies Act (Cal. Civil Code § 1750 *et seq.*) for failure to state a claim; (v) dismiss plaintiffs’ claim under the Massachusetts Consumer Protection Act (Mass Gen. L. ch. 93A) for failure to state a claim; and (vi) dismiss Count III of the Complaint, plaintiffs’ claim for breach of contract, for failure to state a claim.

The grounds for Sirius XM's motion are set forth in the accompanying memorandum of law.

Dated: May 18, 2010

Respectfully submitted,



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